

cast doubt on the proposition that the assessment was “well apportioned.”<sup>13</sup> The FCC represented to the court that it assessed the challenged fees in order to recover the costs that it incurred in overseeing the Company in its role as the U.S. signatory to INTELSAT.<sup>14</sup> However, the D.C. Circuit pointedly observed that the “fees assessed to COMSAT seem to bear no relation to the signatory-related costs that the Commission identified COMSAT as having created and that it has said it wishes to recover.”<sup>15</sup>

Materials provided by the Commission in response to FOIA requests for Fiscal Years 2000 and 2001 indicate that the fees for those fiscal years exceeded actual COMSAT-related costs by factors of three and four, respectively.<sup>16</sup> Fees so grossly disproportionate to costs clearly do not satisfy the “reasonable relationship” standard. It is COMSAT’s belief that similarly inflated regulatory fees were imposed on the company for FY 1998. Absent some “reasonable relationship” to costs, these fees violate Section 9.

As noted above, the history of litigation over regulatory fees for COMSAT has led the Commission to assess signatory-related fees on COMSAT through the agency’s space station fee category. Without an appropriate adjustment to reflect COMSAT’s actual regulatory costs, however, the Commission’s methodology is doomed to misstate COMSAT’s liability—this is so because it does not account for the fact that COMSAT’s signatory-related costs are but a small

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<sup>13</sup> 283 F 3d at 349

<sup>14</sup> See FCC Resp. Br. at 33, COMSAT II (No. 00-1458) (“[T]he costs attributable to space station oversight include costs directly related to Intelsat signatory activities”). See also *COMSAT II*, 283 F 3d at 347 (quoting *FY 2000 Order* at 14489 ¶ 24)

<sup>15</sup> 283 F 3d at 349

<sup>16</sup> Signatory-related costs for Fiscal Year 2000 were \$564,082, while fees imposed on COMSAT were \$1,609,050, a mark-up of 285%, for Fiscal Year 2001, costs were \$370,476 but fees imposed were \$1,668,125, a mark-up of 450%. See Letter of Lawrence W. Secrest, III, Esq., to Marlene Dortch, Secretary, MD Dkt. No. 01-76 (dated Oct. 7, 2002) (submitting copy of FCC’s response to request under Freedom of Information Act for agency data on costs of regulating COMSAT’s use of INTELSAT satellites)

portion of all costs recovered by that fee category.<sup>17</sup> When the Commission attempts to account for COMSAT's costs by sweeping them into the space station fee category, the agency combines signatory-related costs with space station costs for a given fiscal year, then divides those costs by the number of space stations regulated in that year, and charges regulatees a fee on a per-station basis. By spreading the signatory and space station costs over all space station licensees and COMSAT, on a pro rata basis, the Commission might accurately assess COMSAT's liability only by sheer serendipity. But based on the details released to date, it appears that the FCC is imposing an inflated fee assessment that, in fact, forces COMSAT to cross-subsidize its competitors by paying for regulatory costs that they—not COMSAT—caused and properly should bear. To right the wrong, the Commission must devise a system of fee assessment that is designed to produce an amount approximating the actual regulatory costs generated by COMSAT.

Granting COMSAT's request for reduction and refunding the excessive fees collected will not set precedent that could be used by future regulatees. As the Commission well knows, COMSAT was a unique corporate creature—chartered by Congress during the Kennedy Administration to establish the world's first commercial communications satellite system, which became INTELSAT. Since the 1960s, a number of competing commercial satellite systems have emerged, some of which are licensed by the United States while others are regulated by foreign authorities. Because of marketplace developments, the former IGO privatized in the second half of 2001 and now operates as a conventional private company which holds U.S. satellite licenses

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<sup>17</sup> The D C Circuit in *COMSAT II* notes the FCC's 1996 estimate that signatory-related costs amounted to 14.7% of the costs attributable to space station regulatory oversight. 283 F.3d at 349.

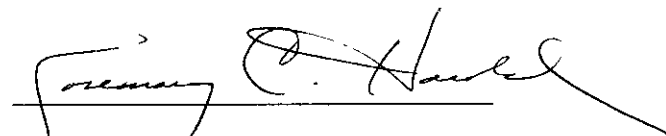
for the Intelsat facilities and pays the Commission's space station regulatory fees accordingly.<sup>18</sup> In addition, Intelsat acquired COMSAT's portfolio of Intelsat-based business assets in 2002; today, neither Lockheed Martin nor COMSAT provide satellite-based communications services to customers via the Intelsat system. In short, the necessity for fee reductions compelled by COMSAT's unique status ended in FY 2002.

For the reasons set forth above, the Commission should reduce the regulatory fees imposed upon COMSAT for FY 1998 to a level reasonably related to the actual costs that the agency incurred in regulating COMSAT during that fiscal year and, accordingly, refund the excessive fees that the company has remitted.

Respectfully submitted,

Lockheed Martin Corporation  
COMSAT Corporation

By:



Lawrence W. Secrest, III  
Rosemary C. Harold  
Nia C. Mathis  
WILEY, REIN & FIELDING, LLP  
1776 K St. N.W.  
Washington, D.C. 20006

Its Attorneys

July 14, 2003

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<sup>18</sup> See *Applications of Intelsat LLC, Memorandum Opinion and Authorization*, 15 F.C.C. Rcd 15460 (2000), *reconsideration denied, Intelsat LLC, Order on Reconsideration*, 15 F.C.C. Rcd 25234 (2000).



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July 14, 2003

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Andrew S. Fishel  
Managing Director  
Federal Communications Commission  
Revenue & Receivables Operations  
P.O. Box 358835  
Pittsburgh, PA 15251-5835  
*Attn: Petitions*

**Re: Comsat Corporation FY 1998 Regulatory Fees  
Bill No. FY03RROG01  
Payer's FCC Registration Number: 0006789507**

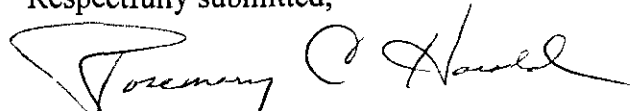
Dear Mr. Fischel:

By its undersigned attorney, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT"), herewith submit a check in the amount of \$1,876,800 in response to your letter and billing statement of June 13, 2003 concerning the geosynchronous space station regulatory fees assessed against COMSAT for Fiscal Year 1998. These fees are being submitted under protest. Accompanying this submission is a copy of COMSAT's Petition for Reduction and Refund of the FY 1998 fees, which is being filed contemporaneously with your office under separate cover. In conjunction with that Petition, COMSAT today also is submitting under separate cover a request under the Freedom of Information Act to obtain documents relating to Signatory and space station regulatory fees assessed against COMSAT for fiscal years 1998 and 1999.

Please date-stamped the enclosed duplicate of this submission and return it to us via the messenger for our records.

Should any questions arise concerning this matter, kindly contact the undersigned.

Respectfully submitted,

  
Rosemary C. Harold

cc: Bryan Tramont (via e-mail)  
Susan H. Steiman (via e-mail)  
Claudette E. Pride (via e-mail)

190. 521 \_\_\_\_\_

**FOR INQUIRIES CALL**  
1-202-418-1995

ROBERT A MANSBACH  
LOCKHEED MARTIN GLOBAL TELECOMMUNICATIONS  
6560 ROCK SPRING DRIVE  
BETHESDA, MD 20817

Payable to:  
Federal Communications  
Commission

Send a copy of this bill to:  
Federal Communications  
Commission  
Revenue & Receivables Operations  
P.O. BOX 358835  
PITTSBURGH, PA 15251-5835

[illegible]

**SPECIAL INSTRUCTIONS: OPTIONAL  
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**Please attach a copy of this bill to your payment to ensure proper credit.**

Payment Method: Check ☒ (Attach)  
Credit card ☐ (Complete Below)

Expiration:

I hereby authorize the ECC to charge my MASTERCARD or VISA for the service(s) / authorization(s) herein described

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AUTHORIZED SIGNATURE DATE



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July 14, 2003

Rosemary C. Harold  
202.719.4901  
rharold@wrf.com

**VIA HAND DELIVERY**

Andrew S. Fishel  
Attention: FOIA Officer  
Federal Communications Commission  
236 Massachusetts Avenue, N.E.  
Suite 110  
Washington, D.C. 20002

Re: **FREEDOM OF INFORMATION ACT REQUEST**

Dear Mr. Fishel:

By its undersigned attorney, Lockheed Martin Corporation and its subsidiary COMSAT Corporation (collectively "COMSAT") hereby submit an original and two copies of the following Freedom of Information Act request pursuant to 5 U.S.C. § 552 and 47 C.F.R. §§ 0.441-0.470 to obtain documents relating to Signatory and space station regulatory fees assessed against it for fiscal years 1998 and 1999. The regulatory fees were established in the following orders:

- *Assessment and Collection of Regulatory Fees for Fiscal Year 1998, Report & Order, 13 F.C.C. Rcd 19820 (1998) and*
- *Assessment and Collection of Regulatory Fees for Fiscal Year 1999, Report & Order, 14 F.C.C. Rcd 9868 (1999).*

This request follows a similar FOIA request dated May 6, 2002, in which COMSAT asked for information related to the Commission's determination of regulatory fees assessed against COMSAT in connection with its use of space stations owned and operated by INTELSAT for the fiscal years 1996, 2000, and 2001. COMSAT now seeks similar information for the fiscal years 1998 and 1999.

Specifically, please provide the *Cost Regulatory Fee Summary Reports S/E Rollup by Non Reimbursable Projects* for the following projects: Signatory to Inmarsat and INTELSAT, Direct Broadcast Satellite, and Low Earth Orbiting Satellite. Please provide all documents – including all facts, figures, calculations, assumptions, explanations of methods, and conclusions – containing or reflecting information regarding:

- a) cost of authorization of service,

Wiley Rein & Fielding LLP

Andrew S. Fishel  
July 14, 2003  
Page 2

- b) policy and rule making costs,
- c) enforcement costs, and
- d) cost of public information services.

In addition, for the fiscal years represented above, please include any and all information regarding:

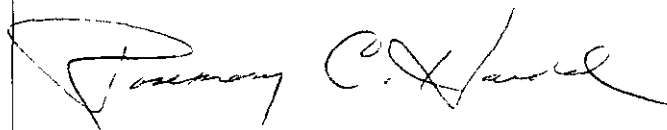
- (1) The Commission's determination of the total geostationary space station and/or Signatory fee, including all component parts of this fee relating to COMSAT;
- (2) The Commission's determination of the portion of the geostationary space station fee attributable to regulatory oversight of COMSAT and/or COMSAT's role as Signatory to INTELSAT and Inmarsat-related activities, as applicable.

This request should be interpreted to include documentation of any other costs that the Commission purported to capture in its regulation of COMSAT and COMSAT's Signatory-related activities. This request also includes, but is not limited to, all print and electronic data that reflects the information requested.

The undersigned has reviewed the FOIA exemptions set forth in 5 U.S.C. § 552(b)(1)-(5) and further described in 47 C.F.R. § 0.457, and in good faith believes that none of these exemptions prohibits the disclosure of the requested information.

The undersigned authorizes the Commission to spend up to \$1,000.00 in searching for and duplicating documents responsive to this request. Please contact the undersigned at 202.719.4901 if advance payment is required.

Respectfully submitted,



Rosemary C. Harold



Warren Y. Zeger  
Vice President  
General Counsel and Secretary

6560 Rock Spring Drive  
Bethesda, MD 20817  
Telephone 301 214 3610  
Fax 301 214 7128

January 27, 2000

Christopher J. Wright, Esq.  
General Counsel  
Federal Communications Commission  
445 12th Street, N.W.  
Washington, D.C. 20554

Re: Applicability of Section 9 Space Station Fees to COMSAT Corporation

Dear Mr. Wright:

As you know, the U.S. Court of Appeals for the District of Columbia Circuit has remanded the Commission's Report and Order establishing regulatory fees for FY 1998 "for reconsideration of COMSAT's exemption from § 9 space station fees." *PanAmSat Corporation v. FCC*, Case No. 98-1408 (Dec. 21, 1999), slip op. at 15. By this letter, COMSAT respectfully submits its views as to how the Commission should treat this case on remand.

As a threshold matter, **the Court's decision does not require the Commission to impose § 9 space station fees on COMSAT for satellites in the INTELSAT and Inmarsat systems.**<sup>1</sup> The Court merely disagreed with the particular reasons the Commission advanced for concluding that the statute compelled an exemption for COMSAT. In remanding for further proceedings, the Court explicitly left open the possibility that there might be other bases for concluding that the statute did not subject COMSAT to payment of these fees.

In fact, **the statute establishes on its face -- in language not brought to the Court's attention -- that the requirement for the FCC to assess § 9 space station fees does not encompass the facilities used by COMSAT on INTELSAT and Inmarsat satellites.** Under the statute, the space station fee is one of several imposed on "Radio Facilities." The line item in question reads in full: "Space Station (per operational station in geosynchronous orbit) (47 CFR Part 25)." **The INTELSAT and Inmarsat space stations are not subject to this fee because the Commission does not regulate them under Part 25.** Indeed, those "radio facilities" are not subject to U.S. jurisdiction at all. For example, INTELSAT space stations are not subject to the 2° spacing requirements of Section 25.140 of the Rules.

Moreover, **the Commission does not regulate COMSAT under Part 25 with respect to INTELSAT and Inmarsat space stations.** COMSAT's applications with respect to these space stations are not filed on FCC Form 312, as would be required by Section 25.114 if Part 25 were

<sup>1</sup> COMSAT must and does pay § 9 space station fees on its U.S.-licensed space stations, i.e., the COMSTAR and MARISAT satellites. COMSAT also pays § 9 earth station fees on all of its U.S.-licensed earth stations, including those that access INTELSAT and Inmarsat satellites, as well as § 9 bearer circuit fees on all of its international traffic, the vast bulk of which is carried on INTELSAT and Inmarsat satellites.



applicable, and the information provided in those applications is not governed by Sections 25.114 and 25.140. Most importantly, COMSAT does not receive a license from the FCC pursuant to Section 25.117. Significantly, § 8 of the Act, which provides for the collection of space station application fees, contains no reference to Part 25. Thus, the fact that COMSAT is subject to § 8 application fees does not suggest that it is also subject to § 9 fees on space station facilities.

**When the full text of the relevant statutory provision is taken into account, the legislative report language addressing that provision becomes crystal clear:** Congress intended that § 9 space station fees “be assessed on operators of U.S. facilities, consistent with FCC jurisdiction. Therefore, these fees will apply only to space stations directly licensed by the Commission under Title III of the Communications Act.” H.R. Rep. No. 207, 102d Cong., 1st Sess. 26 (1991), incorporated by reference in Conf. Rep. No. 213, 103d Cong., 1st Sess. 449 (1993).

**The INTELSAT and Inmarsat space stations are not U.S. facilities.** Rather, they are expressly treated as *non-U.S.* facilities and are not licensed by the FCC. As the Commission explained in its *DISCO-II* proceeding, “the phrase ‘non-U.S.’ satellite system or operator means one that does not hold a commercial space station license from the Commission. By contrast, a ‘U.S.’ satellite system or operator means one whose space station is licensed by the Commission.” *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Service in the United States*, 12 FCC Rcd 24094, 24098 n.6 (1997) (“*DISCO-II Order*”). These definitions, which also were not brought to the Court’s attention, make clear that Congress did not intend to impose § 9 space station fees on INTELSAT and Inmarsat satellites.

Thus, as the Court itself suggested, **the “coverage of the space station category in § 9” is such that a COMSAT-specific exemption is not necessary.** Any words to the contrary are *dicta* based on an incomplete record in which key points were not briefed. Indeed, had the significance of Part 25 been brought to the Court’s attention, it is highly likely that the Court would have reached a different result. For all these reasons, **the Commission may not impose § 9 regulatory fees on INTELSAT and Inmarsat space stations.** These substantive considerations apply both prospectively and retroactively.

In addition, there are a number of other reasons why such fees may not be imposed retroactively. First, **the Commission’s Notice of Proposed Rulemaking for Fiscal Year 1998 did not mention the prospect of imposing space station fees on COMSAT.** It simply stated that “entities authorized to operate geostationary space stations (including DBS satellites) will be assessed an annual regulatory fee of \$119,000 per operational station in orbit.” *Assessment and Collection of Regulatory Fees for Fiscal Year 1998 (Notice of Proposed Rulemaking)*, 13 FCC Rcd 6977, 7039 (1998) (“*1998 NPRM*”). The *NPRM* also stated that payment unit estimates for the “Space Station” fee category were based on the International Bureau’s “licensee data bases.” *Id.* at 7019. As noted above, COMSAT holds no licenses from the Commission that “authorize [it] to operate [INTELSAT and Inmarsat] space stations.” Thus, the *1998 NPRM* did not constitute notice to COMSAT, a non-licensee, that it might be subject to space station fees.

**The Commission's Order for FY 1998 also did not discuss whether space station fees might be imposed on COMSAT.** To the contrary, the Order stated that, "due to the tight collection schedule we face at this point, we have no viable alternative other than adoption of the fee as proposed in the *NPRM*. . . . Moreover, since the calculation of annual regulatory fees has been a matter of dispute for several years, we will soon issue a Notice of Inquiry which will entertain suggestions for alternative approaches based on different criteria and information." *Assessment and Collection of Regulatory Fees for Fiscal Year 1998*, 13 FCC Rcd 19820, 19836 (1998) ("*1998 Order*")

In light of these statements, COMSAT had no notice that its exemption from space station fees might become an issue in the 1998 fee proceeding. The fact that a few parties mentioned the issue in their comments is of no moment; under the APA, notice must come from the agency. *See, e.g., AFL-CIO v. Donovan*, 757 F.2d 330, 340 (D.C. Cir. 1985). In addition, **COMSAT was not served with notice of PanAmSat's appeal, and was not notified by the Commission of that appeal.**

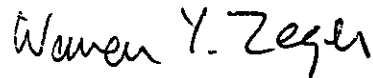
Because APA notice was inadequate, the FCC lacked authority in the 1998 proceeding to impose space station fees on COMSAT. **If the Commission were to commence a new rulemaking now to decide whether to impose such fees for 1998, it would be engaging in a prohibited retroactive imposition of fees.** Under the due process standard, a statutory grant of legislative rulemaking authority will not, as a general matter, be understood to encompass the power to promulgate retroactive rules unless that power is conveyed by Congress in explicit terms. *See, e.g., Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988). In particular, a court must strike down an administrative action that "without notice, gives a different and more oppressive legal effect to conduct undertaken before [the action is taken]." *U.S. v. Hemme*, 476 U.S. 558, 569 (1986).

**The Commission also failed to provide notice that it might impose space station fees on COMSAT in the 1999 fee proceeding.** Its NPRM for FY 1999 mentioned neither the word "COMSAT" nor the phrase "space station." Instead, the Commission simply declared that it "would continue to use the same general methodology [for FY 1999] . . . used in developing fees for FY 1998." *Assessment and Collection of Regulatory Fees for Fiscal Year 1999 (Notice of Proposed Rulemaking)*, 14 FCC Rcd 5918, 5922 (1999). The Commission also noted that "there are 43 Geostationary Space Station licensees" subject to § 9 fees, and made no suggestion that non-licensees might become subject to such fees. *Id.* at 5940.

**In any event, the FCC may not impose space station fees on COMSAT for FY 1999 because the fee order for that year is final and non-reviewable as to COMSAT and all other parties except one (CTIA).** The 1999 fee order was not appealed (by PanAmSat or anyone else), and is subject only to CTIA's petition for reconsideration on a different issue. While the Commission has sometimes asserted that a petition for reconsideration on any issue permits it to reconsider any other issue *sua sponte*, that position will not withstand judicial review. "Finality with respect to agency action is a party-based concept." *United Transp. Union v. ICC*, 871 F.2d 1114, 1116 (D.C. Cir. 1989). Here, no party sought reconsideration of the Commission's computation of the amount of regulatory fees to be paid by COMSAT, and the time for *sua sponte* reconsideration has long since passed.

Finally, the Commission has no basis for imposing space station fees on COMSAT for Inmarsat or New Skies satellites for FY 1999 or any subsequent year. New Skies was spun off from INTELSAT in November 1998. Inmarsat was fully privatized in April 1999. Both of these events occurred well before the October 31, 1999 cutoff date for FY 1999 fee applicability. Both Inmarsat and New Skies are licensed outside the United States (Inmarsat in the United Kingdom and New Skies in the Netherlands) and both are treated as non-U.S. systems under *DISCO-II*. COMSAT is no longer the U.S. Signatory to Inmarsat and, of course, has no Signatory role with respect to New Skies. Accordingly, the Commission may not impose space station fees on COMSAT for satellites that belong to other entities.

Respectfully submitted,



Warren Y. Zeger

cc: Susan Steiman, FCC  
C. Grey Pash, FCC  
James Ball, FCC  
Henry Goldberg, PAS

6560 Rock Spring Drive Bethesda, MD 20817  
Telephone 301-214-3459 Facsimile 301-214-7145  
E-mail: robert.mansbach@lmco.com

0109 268835483010

**LOCKHEED MARTIN**  
GLOBAL TELECOMMUNICATIONS

Robert A. Mansbach  
Assistant General Counsel

September 24, 2001

Andrew S. Fishel  
Office of the Managing Director  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

RECEIVED  
SEP 27 3 16 PM '01  
ASSOC. MNG. DIR.  
FINANCIAL OPERATIONS  
(AND-FD)

Re: *COMSAT Corporation/ COMSAT World Systems Annual Regulatory Fees*

Dear Mr. Fishel:

COMSAT Corporation, a subsidiary of Lockheed Martin Global Telecommunications, LLC, herein submits a petition for reduction made pursuant to 47 C.F.R. § 1.1166, in conjunction with its payment of \$1,668,125 in annual space station regulatory fees for 17 space stations that were owned and operated by INTELSAT at the start of fiscal year 2001.<sup>1</sup>

### **I. PETITION FOR RECONSIDERATION**

On August 6, 2001, COMSAT filed a Petition for Reconsideration of the Commission's Final Order captioned *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, 66 Fed. Reg. 36,177 (July 11, 2001) (the "FY 2001 Order"). COMSAT's Petition for Reconsideration is based upon the arguments set forth in COMSAT's briefs in support of its challenge to the Commission's Final Order captioned *In the Matter of Assessment and Collection of Regulatory Fees for Fiscal Year 2000*, 15 F.C.C. Rcd 14478 (2000), which is currently

<sup>1</sup> These satellites are: Satellite 511 (330.5° E.L.); Satellite 601 (325.5° E.L.); Satellite 602 (62.0° E.L.); Satellite 603 (335.5° E.L.); Satellite 604 (60.0° E.L.); Satellite 605 (332.5° E.L.); Satellite 701 (180.0° E.L.); Satellite 702 (177.0° E.L.); Satellite 704 (66.0° E.L.); Satellite 705 (342.0° E.L.); Satellite 706 (307.0° E.L.); Satellite 707 (359.0° E.L.); Satellite 709 (310.0° E.L.); Satellite 801 (328.5° E.L.); Satellite 802 (174.0° E.L.); Satellite 804 (64.0° E.L.); and Satellite 805 (304.5° E.L.). As the Commission is well aware, INTELSAT privatized on July 18, 2001 and simultaneously became the space station licensee for the above-listed satellites pursuant to the *Applications of Intelsat LLC, Memorandum Opinion and Authorization*, 15 F.C.C. Rcd 15460 (2000), *reconsideration denied, Intelsat LLC, Order on Reconsideration*, 15 F.C.C. Rcd 25234 (2000). The FCC has not requested that Intelsat LLC pay any fees on these satellites for fiscal year 2001, even though the satellites were licensed to Intelsat LLC for a portion of fiscal year 2001.

Federal Communications Commission  
Annual Regulatory Fees for INTELSAT Space Stations  
Page 2 of 4

pending in the United States Court of Appeals for the District of Columbia Circuit. *See* Final Brief for the Petitioner, *COMSAT Corp. v. FCC, et al.* (D.C. Cir., filed Aug. 13, 2001) (No. 00-1458) and Final Reply Brief for the Petitioner, *COMSAT Corp. v. FCC, et al.* (D.C. Cir., filed Aug. 13, 2001) (No. 00-1458). The Commission has not acted upon COMSAT's Petition for Reconsideration. If the Commission acts favorably on COMSAT's Petition for Reconsideration, then the enclosed payment should be refunded.

## **II. REQUEST FOR FEE REDUCTION**

If the Commission declines to grant COMSAT's Petition for Reconsideration and invalidate the portion of the *FY 2001 Order* that applies to COMSAT's required payment for INTELSAT satellites, the Commission should nonetheless reduce COMSAT's regulatory fee payment relating to the INTELSAT satellites because "good cause" exists for such a reduction and "reduction . . . would promote the public interest." 47 C.F.R. § 1.1166.<sup>2</sup> There is good cause for such a reduction, and such a reduction is in the public interest because: (1) INTELSAT satellites were neither regulated nor licensed by the Commission; and (2) COMSAT utilized only 17 percent of the capacity of those satellites.

### **A. COMSAT's Regulatory Fees For The INTELSAT Space Stations Should Be Reduced To Zero.**

The Commission may not assess regulatory fees in any amount on COMSAT for the INTELSAT satellites because those satellites were neither regulated by the Commission nor subject to regulatory fees under 47 U.S.C. § 159 during the relevant time period. Title 47 U.S.C. § 159(g) imposes fees on "Space Station[s] per operational station in geosynchronous orbit (47 CFR Part 25)." Because the INTELSAT satellites were not regulated by the FCC pursuant to Part 25 of the Commission's Rules or otherwise, INTELSAT space stations were not subject to Section 9 regulatory fees. Neither COMSAT's activities regulated under 47 U.S.C. § 158 nor the company's involvement in the financing and governance of INTELSAT justifies the agency's departure from 47 U.S.C. § 159's clear requirement that a "space station" be regulated under "47 CFR Part 25" before space station regulatory fees may be assessed on it. For this reason, COMSAT's regulatory fee obligation relating to the INTELSAT satellites is zero.

### **B. At A Minimum, COMSAT's Regulatory Fees Should Be Reduced To Reflect COMSAT's Percentage Of Use Of The INTELSAT System.**

Even if the Commission insists on imposing regulatory fees on COMSAT for INTELSAT space stations that were not licensed or regulated by the FCC during the relevant time period,

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<sup>2</sup> COMSAT does not contest other regulatory fees assessed on its non-INTELSAT facilities and international bearer circuits, which have been paid under separate cover.

Federal Communications Commission  
Annual Regulatory Fees for INTELSAT Space Stations  
Page 3 of 4

COMSAT's fees should be reduced, at a minimum, to reflect the company's percentage of use of the INTELSAT system. The Commission's rules specifically contemplate that a fee reduction can be granted in the case of "shared use" of facilities. See 47 C.F.R. § 1.1163(c)(1) ("The fees assessed shall: Be . . . adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities, including such factors as service coverage area, *shared use versus exclusive use*, and other factors that the Commission determines are necessary in the public interest.") (emphasis added).

COMSAT used about 17 percent of INTELSAT space segment capacity during fiscal year 2001.<sup>3</sup> Although COMSAT served as the U.S. Signatory to INTELSAT prior to privatization, it is important to recognize that COMSAT does not (and never did) own the space stations, direct their operations, or control utilization of the INTELSAT system (as INTELSAT was an intergovernmental organization comprised of 143 member nations that operated much like a cooperative).<sup>4</sup> Moreover, since November 1999, U.S. carriers and users have been authorized "to obtain direct access to INTELSAT telecommunications services and space segment capacity through purchases of such capacity or services from INTELSAT" directly, and have not been required to obtain this capacity through COMSAT. 47 U.S.C. § 765(a); see *Direct Access to the INTELSAT System*, 14 F.C.C. Rcd 15703 (1999), *appeal dismissed*, No. 99-1412 (D.C. Cir. Mar. 29, 2000). COMSAT therefore does not possess, with respect to INTELSAT satellites, valuable rights typically enjoyed by licensees. Thus, any obligation on the part of COMSAT to pay regulatory fees based upon INTELSAT space stations should be based upon COMSAT's percentage of utilization of the system, and not upon 100 percent of INTELSAT capacity.

### III. CONCLUSION

By its payment of regulatory fees consistent with the *FY 2001 Order*, COMSAT should not be viewed as having waived or relinquished any of its rights to pursue and obtain a refund of the monies paid.

Enclosed is a Duplicate Original copy for our records. Please stamp the Duplicate Original and return it to the undersigned in the enclosed postage prepaid envelope.

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<sup>3</sup> U.S. direct access customers accounted for about 2 percent of INTELSAT system utilization in fiscal year 2001. The remaining 81 percent of the system was utilized by foreign Signatories and direct access customers.

<sup>4</sup> Moreover, COMSAT, as U.S. Signatory, had only a 20.4 percent ownership interest in the INTELSAT organization at the start of fiscal year 2001.

**Federal Communications Commission  
Annual Regulatory Fees for INTELSAT Space Stations  
Page 4 of 4**

**Respectfully submitted,**

**COMSAT Corporation  
COMSAT World Systems**

By:   
\_\_\_\_\_  
**Robert A. Mansbach  
Its Attorney  
(301) 214-3459**

**cc: Federal Communications Commission, Regulatory Fees  
Magalie Salas, Secretary, Federal Communications Commission  
Peter A. Tenhula, Senior Legal Advisor to Chairman Powell  
Bryan Tramont, Senior Legal Advisor to Commissioner Abernathy  
Paul Margie, Spectrum and International Legal Advisor to Commissioner Copps  
Monica Shah Desai, Interim Legal Advisor for Wireless and International Issues to  
Commissioner Martin**

THIS DOCUMENT HAS LIGHT BLUE (MGT LOGOS IN THE BACKGROUND & ARTIFICIAL WATERMARK ON BACK.

**LOCKHEED MARTIN**  
GLOBAL TELECOMMUNICATIONS LLC

BANK OF AMERICA  
Commercial Disbursement Account  
Northbrook, IL

70-2328  
0719

005818

6560 ROCK SPRING DRIVE  
BETHESDA, MD 20817

Date September 13, 2001

Pay Amount \$1,668,125.00\*\*\*

Pay \*\*\*\*ONE MILLION SIX HUNDRED SIXTY-EIGHT THOUSAND ONE HUNDRED TWENTY-FIVE AND XX / 100 US DOLLA

To The  
Order Of

FEDERAL COMMUNICATIONS COMMISSION  
1919 M STREET  
WASHINGTON, DC 20554

*[Signature]*  
Authorized Signature

⑈005818⑈ ⑆071923284⑆ 8765503286⑈

Check Date: 13.Sep.2001

Check No. 005818

Invoice Number	Invoice Date	Voucher ID	Gross Amount	Discount Available	Paid Amount
082901*	29.Aug.2001	00069787	1,668,125.00	0.00	1,668,125.00

FEES FOR 17 INTELSAT SATELLITE

Vendor Number	Vendor Name			Total Discounts	
0000000160	FEDERAL COMMUNICATIONS COMMISSION			\$0.00	
Check Number	Date		Total Amount	Discounts Taken	Total Paid Amount
005818	13.Sep.2001		\$1,668,125.00	\$0.00	\$1,668,125.00



# Payment Transactions Detail Report

Date: 09/06/2002

BY: FEE CONTROL NUMBER

Fee Control Number	Payor Name	Fcc Account Number	Payer TIN	Received Date							
0109268835483010	COMSAT CORP 6560 ROCK SPRING DRIVE  BETHESDA MD 20817	WP00025832	0522256227	19/25/2001 00:00:00							
Payment Amount	Current Balance	Seq Num	Payment Type Code	Quantity	Callsign Other Id	Applicant Name	Applicant Zip	Bad Check	Detail Amount	Trans Code	Payment Type
\$1,668,125.00	\$1,668,125.00	1	0174	17		COMSAT CORP	20817		\$1,668,125.00	1	PMT
Total	1								\$1,668,125.00		

0109269835483010

OCT 11 2001

RECEIVED  
Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554  
2001 OCT 18 8 54

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

ACCOUNT PROCESSING  
GROUP-DPT/RPT/TMT

**In the Matter of  
Assessment and Collection  
of Regulatory Fees for  
Fiscal Year 2001**

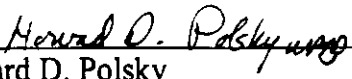
MD Docket No. 01-76

To: The Commission

On August 6, 2001, COMSAT Corporation (“COMSAT”) timely petitioned for reconsideration of Paragraphs 29, 39, 42, and 43, and Attachment A Paragraph 22 of the *Report and Order* in the above-captioned proceeding, *Assessment and Collection of Regulatory Fees for Fiscal Year 2001*, FCC 01-196, MD Docket No. 01-76, 66 Fed. Reg. 36177 (July 11, 2001) (“*FY 2001 Order*”).


Due to a miscommunication between COMSAT's attorneys and its Finance Personnel, the Petition stated that COMSAT used 19 percent of the space segment capacity of the INTELSAT system in fiscal year 2001. *See* Petition for Reconsideration at 4. The 19 percent figure stated by COMSAT is incorrect. Rather, COMSAT used only 17 percent of INTELSAT capacity in fiscal year 2001. The remaining 2 percent that COMSAT had included to arrive at the 19 percent figure was used by U.S. direct access customers, not by COMSAT.

Respectfully submitted,

  
Howard D. Polsky  
Robert A. Mansbach

**COMSAT CORPORATION**  
6560 Rock Spring Drive  
Bethesda, MD 20817  
301.214.3000

October 11, 2001

  
Lawrence W. Secrest III  
William B. Baker

**WILEY REIN & FIELDING LLP**  
1776 K Street NW  
Washington, DC 20006  
202.719.7000

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554**

In the Matter of  
Assessment and Collection  
of Regulatory Fees for  
Fiscal Year 2001

)  
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MD Docket No. 01-76

To: The Commission

**CERTIFICATE OF SERVICE**

I hereby certify that on this eleventh day of October, 2001, I caused copies of the foregoing "Comsat Corporation's Notice of Errata to Petition for Reconsideration" to be dispatched by hand to all parties listed below:

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Kristina R. Osterhaus  
Kristina R. Osterhaus

ORAL ARGUMENT SCHEDULED FOR OCTOBER 16, 2001  
No. 00-1458

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**BEFORE THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

COMSAT CORPORATION, Petitioner,

v.

FEDERAL COMMUNICATIONS COMMISSION  
and UNITED STATES OF AMERICA, Respondents,

and

PANAMSAT CORPORATION, Intervenor

**ON PETITION FOR REVIEW OF A FINAL RULEMAKING ORDER  
OF THE FEDERAL COMMUNICATIONS COMMISSION**

**FINAL REPLY BRIEF FOR THE PETITIONER**

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August 13, 2001

## TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES .....	iii
INTRODUCTION AND SUMMARY .....	1
ARGUMENT .....	4
I. THE FCC IS STATUTORILY PRECLUDED FROM IMPOSING SECTION 9 SPACE STATION FEES ON INTELSAT SATELLITES.....	4
A. The FCC Does Not Regulate INTELSAT's Satellites As "Radio Facilities." And Thus Incurs No Costs As The Result Of Such Regulation.....	6
B. The FCC May Not Reinstate, Under A Different Name, The Same Unlawful "Signatory Fee" That This Court Previously Struck Down.....	8
C. The FCC May Not Lawfully Impose Fees On COMSAT (But Not On Other, Similarly Situated Companies) By Making A Wholly Artificial Distinction Between "Foreign-Licensed Satellites" And "Non-U.S.-Licensed" Satellites.....	13
II. THE <i>PANAMSAT</i> COURT DID <i>NOT</i> DECIDE WHETHER SECTION 9 REQUIRES COMSAT TO PAY REGULATORY FEES IN CONNECTION WITH INTELSAT SPACE STATIONS.....	16
A. Although It Directed The FCC To Analyze Section 9's Text Before Resorting To Legislative History, <i>PanAmSat</i> Did Not Purport To Adopt Any Definitive Interpretation Of Section 9.....	17
B. The FCC May Not Rely On <i>Dicta</i> In <i>PanAmSat</i> As A Substitute For Performing The Statutory Analysis Mandated By The <i>PanAmSat</i> Court.....	18
C. Section 9 Regulatory Fees Are Distinct From Section 8 Application Fees.....	20

III. REVERSAL OF THE <i>FY 2000 ORDER</i> WILL NOT CAUSE COMSAT'S COMPETITORS TO PAY ADDITIONAL SECTION 9 REGULATORY FEES. ....	21
IV. THE COMMISSION FAILS TO DEFEND ITS ARBITRARY AND CAPRICIOUS REFUSAL TO PRORATE ANY REGULATORY FEES THAT MIGHT BE ASSESSED AGAINST COMSAT. ....	24
CONCLUSION .....	28
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	



## TABLE OF AUTHORITIES

### Cases

<i>Ass'n of American Railroads v. ICC</i> , 564 F.2d 486 (D.C. Cir. 1977) .....	14
<i>Astoria Federal Savings &amp; Loan Ass'n v. Solimino</i> , 501 U.S. 104 (1991) .....	8
* <i>COMSAT Corp. v. FCC</i> , 114 F.3d 223 (D.C. Cir. 1997) .....	<i>passim</i>
<i>Chase Manhattan Bank v. Finance Administration of City of New York</i> , 440 U.S. 447 (1979).....	12
<i>Citibank, N. A. v. New York City Finance Administration</i> , 372 N.E.2d 789 (N.Y. 1977) .....	13
<i>Cohens v. Virginia</i> , 19 U.S. (6 Wheat.) 264 (1821).....	18-20
<i>Duquesne Light Co. v. EPA</i> , 698 F.2d 456 (D.C. Cir. 1983) .....	14
<i>Justin v. Jacobs</i> , 449 F.2d 1017 (D.C. Cir. 1971) .....	16
<i>LaShawn A. v. Barry</i> , 87 F.3d 1389 (D.C. Cir. 1996) (en banc).....	10
<i>Meredith v. Federal Mine Safety &amp; Health Review Commission</i> , 177 F.3d 1042 (D.C. Cir. 1999) .....	14
<i>New Orleans Channel 20, Inc. v. FCC</i> , 830 F.2d 361 (D.C. Cir. 1987) .....	16
* <i>PanAmSat Corp. v. FCC</i> , 198 F.3d 890 (D.C. Cir. 1999).....	<i>passim</i>
<i>Stanton v. District of Columbia Court of Appeals</i> , 127 F.3d 72 (D.C. Cir. 1997).....	5
<i>United States v. Clark</i> , 445 U.S. 23 (1980) .....	16
<i>United States v. Hatter</i> , 121 S. Ct. 1782 (2001).....	12